

**Town of Milton
Planning & Zoning Meeting
Milton Library, 121 Union Street
Tuesday, December 20, 2011
7:00 pm**

**Minutes are not Verbatim
Transcriptionist: Helene Rodgville**

1. Call Meeting to Order
2. Roll Call of Members

Lynn Ekelund	Present
Bob Heinrich	Present
Don Mazzeo	Present
3. Additions/Corrections/ to the Agenda
Don Mazzeo: Do we have any additions or corrections to the Agenda as it has been posted?
4. Approval of agenda
Don Mazzeo: Hearing none, do I have a motion to accept the agenda?
Bob Heinrich: I make a motion to accept the agenda.
Lynn Ekelund: Second.
Don Mazzeo: We have a motion to accept the agenda. All in favor say aye.
Opposed. The agenda has been approved.
5. Approval of minutes from November 15, 2011
Don Mazzeo: Does anyone have any comments or corrections to the minutes from November 15th meeting?
Bob Heinrich: I have a correction.
Don Mazzeo: Where would you like that to be corrected?
Bob Heinrich: Page 4.
Don Mazzeo: You must have read it more thoroughly than I.
Bob Heinrich: Page 4, of course it's under my name; Bob Heinrich; seven lines down from Bob Heinrich; it should be affect, not effect. Just wanted to correct the English on that.
Don Mazzeo: Well since I can't find it, I'm not going to try to correct it. That will be corrected by way of minutes. Can I have a motion to approve the minutes, as amended?
Lynn Ekelund: So moved.
Bob Heinrich: Second
Don Mazzeo: All in favor say aye. Opposed. Motion is carried.

6. Public Hearing

a. **Rezoning Application – 104 Mainsail Drive**

Public Hearing on an application from Michael Hughes for the rezoning of the property located at 104 Mainsail Drive from C1 (Commercial) to R1 (Residential) zoning. The parcel is further identified by Sussex County Tax Map & Parcel 32-35-14.00-89.08

Don Mazzeo: Do we have representation from Mr. Hughes here this evening?

Nicole Hughes, 104 Mainsail Drive: I am speaking on behalf of my husband and it's better that I'm here, then he, because he's not very good at public speaking. We would like to have our property rezoned Residential in order to obtain a conventional mortgage. When my husband purchased the property in 2003, he signed in the deed that it would be used as a single family home; so since the deed states that and we are using it as a family home; we would actually like to have the property coincide with that and change it to residential.

Don Mazzeo: Are there any questions from the Commission?

Lynn Ekelund: I have a question. I'm looking at the deed and I note that you're not a party to the deed.

Nichole Hughes: No, we're recently married as of last June, so I'm just speaking on his behalf. I currently live there with him, but I'm not on the deed, no.

Don Mazzeo: We do have in front of us, a copy of the deed that was prepared and put to witness on the 27th of February, 2003. Without reading through it completely, the highlighted section is on Page 2, for those of you who have a copy. The most significant part of this particular deed reads "By acceptance of this deed, the Grantee agrees that no part of the property being conveyed herein, shall be used for commercial purposes. The property shall be restricted to use as a single family residence. This restriction shall run with the land and shall be binding upon the Grantee and all future owners of the property. This restriction may not be amended or removed without the written consent of the Grantors or their heirs, successors or assigns." This is kind of rather significant in my book as that we couldn't put anything other than residents on there, regardless of what happened; unless somebody suggested and requested to be doing so. The presence of the representative...

Bob Heinrich: This is the first I've seen it. When did you get this?

Don Mazzeo: It was here. It was just presented.

Robin Davis: Mr. Chairman, when I've talked to Mike yesterday on the phone, just to remind him about the meeting, he stated that he wouldn't be able to be here and we talked about this deed; pulled it out of the property file; made copies and that's why you have them presented to you today.

Don Mazzeo: Well this is a recorded deed and it appears to be very succinct in what it's stating. We, the town of Milton, can not change this. Would that be correct, Robin?

Robin Davis: Correct.

Don Mazzeo: Okay. And I also note that our Comprehensive Plan indicates that that should be residential. That was the way it was amended in 2010, I believe.

Bob Heinrich: Yeah. No, I had misread something. I didn't see that.

Lynn Ekelund: Is it my understanding that when the deed was made and recorded that the land was commercial and then it was changed in 2010 from commercial to residential.

Robin Davis: Correct. The land was owned originally by Dr. Wagner; along with the piece that is the doctor's office and the homes on each side. He also owned, at that time, the blank piece of land that had some buildings, outbuildings, that are now the townhouses in Admiral's Quarters. Evidently when he sold this property to Mr. Hughes, that stipulation was put in. Also, for 106 Mainsail, there is also a similar wording in their deed, that basically states any commercial uses on this property must be approved by the Grantor; that was Dr. Wagner at the time. I did not see any wording in the deed for 102.

Don Mazzeo: That was going to be my next question. It's kind of strange to me that you have three different lots and you have one that's been put through on a transfer of title and recorded as residential only; but the other two apparently... Well now you're saying 106 also has the stipulation in there, as well.

Robin Davis: Correct.

Don Mazzeo: But not 102.

Robin Davis: I did not see... I only looked at one of these. I did not go back and research further, but it looks like the deed from Mr. Wagner to the current owner and it did not stipulate; or I didn't see any stipulation in there like I see on 104 and 106.

Lynn Ekelund: I have one last question and this is the letter, Robin, that you wrote to the Planning & Zoning members 12/15/11; second line you say the principle structure on the property is currently being used as a residential dwelling unit. Am I to understand that there are other structures on the property?

Robin Davis: No, there's only one primary building on there. I'm not sure if there's an outbuilding; though I'm not sure there's a shed at all.

Lynn Ekelund: Is there none?

Nicole Hughes: No.

Lynn Ekelund: There's just...

Nicole Hughes: It's just one building.

Lynn Ekelund: One building, one home.

Nicole Hughes: Correct.

Lynn Ekelund: A residence.

Nicole Hughes: Correct.

Lynn Ekelund: Thank you.

Don Mazzeo: Robin, would it make any sense then to actually carry it over into the 106 property? Without an application, I'm saying.

Robin Davis: We cannot.

Don Mazzeo: We cannot. Okay.

Robin Davis: Any rezoning has to be by the owner.

Don Mazzeo: Okay.

Bob Heinrich: May I make a motion, Mr. Chairman?

Robin Davis: We're in a Public Hearing still.

Bob Heinrich: Oh, I'm sorry.

Don Mazzeo: Okay. Do we have anyone from the public that would like to comment on this particular application? Seeing none, I will close that portion of the Public Hearing.

7. Business

a. **Rezoning Application – 104 Mainsail Drive**

Public Hearing on an application from Michael Hughes for the rezoning of the property located at 104 Mainsail Drive from C1 (Commercial) to R1 (Residential) zoning. The parcel is further identified by Sussex County Tax Map & Parcel 32-35-14.00-89.08

Don Mazzeo: Now I will entertain a motion.

Bob Heinrich: I would like to make a motion that a, we grant the applicant's request, or, accept the original deed as for what it is; whichever is more correct.

Robin Davis: We have to actually change the zoning, to make it compliant.

Bob Heinrich: Well then I make a motion that we change the zoning.

Lynn Ekelund: Second.

Robin Davis: We would...

Don Mazzeo: Recommend.

Robin Davis: Correct, because we're only doing an Advisory Report as Section 220.89 states. Planning & Zoning will make an Advisory Report and forward it to Town Council; whether to recommend, or disapprove, or not recommend the rezoning application.

Bob Heinrich: I'll reword that to recommend that we make a recommendation to the Town Council that we rezone the property and the application to residential.

Lynn Ekelund: Second that.

Robin Davis: They need to state the reason why they are voting.

Don Mazzeo: We will have a roll call vote:

Lynn Ekelund

I vote yes. The reason for voting primarily is the wording in the deed that we have previously discussed

Bob Heinrich

Don Mazzeo

and secondly, it appears that it is a commercial zoning in an area of our Comprehensive Plan that has been amended to be rezoned residential.

I agree for the same reasons as Lynn Ekelund stated.

And I also vote yes. It's perfectly clear that we have two pieces of evidence that this will be recommended going forward to Council.

Don Mazzeo: So be it. Motion passes.

b. **Annexation and Impact Fees**

Discussion and possible vote on the development of a policy proposal regarding the imposition of annexation and impact fees

Lynn Ekelund: I want to go on record with the same objection as to the inclusion of business, Paragraph b, Annexation and Impact Fees, in that it has not been assigned to Planning & Zoning by the Town Council. Rather, it is an agenda item that was placed on there by the Town Manager; who is not here.

Don Mazzeo: I will ask a question of Robin. How did 7.b. Annexation and Impact Fees appear on our agenda this evening?

Robin Davis: The Planning & Zoning Commission tabled it and as part of the tabling of the business item, it was requested to be tabled to the next meeting, which is this meeting. I think that's in the minutes.

Bob Heinrich: I think I made that motion, actually.

Don Mazzeo: Well then, under those circumstances, I will entertain a motion on this particular tabling of Annexation and Impact Fees.

Bob Heinrich: I will make a motion to table this discussion of Annexation and Impact Fees to postpone it or discuss it at a future date.

Don Mazzeo: Do I have a second? Do I have a second for that motion?

Bob Heinrich: I can't second my own motion.

Don Mazzeo: He made a motion to table this again.

Lynn Ekelund: He made a motion and I have discussion, but I'm not seconding that motion.

Don Mazzeo: Well, under those circumstances, I don't know what we do; because I need a second to have this either tabled or a different motion can be put up; but I need to have either Bob's motion withdrawn.

Bob Heinrich: I'll withdraw my motion.

Don Mazzeo: Okay. Would you like to present a different motion, Lynn?

Lynn Ekelund: I make a motion that Business, b, Annexation and Impact Fees not be placed on a future agenda of Planning & Zoning Commission

until it is assigned to the Planning & Zoning Commission by the Town Council.

Bob Heinrich: I second that motion.

Don Mazzeo: All in favor say aye. Opposed. Motion carried.

8. Adjournment

Don Mazzeo: I need a motion to adjourn.

Lynn Ekelund: I make a motion to adjourn at 7:15 p.m.

Bob Heinrich: Second.

Don Mazzeo: We have a motion and a second to adjourn. All in favor say aye. Opposed. Motion carried. Thank you all.